that you will not find throughout the length and breadth of this land any man who will say that Frank Costello does not keep his word.

He has not been in the best of health, and as I look at his span of life it is perhaps nine years, and I think that your Honor should weigh the life expectancy in considering any sentence you impose and consider, too, that in view of what happened in the past, that any sentence you give will have to be served (2412) as in full, because he was not given any parole the last time and I think he would expect no other consideration this time. So, unlike many sentences, where a man may have parole, I think you must take into consideration the obvious, and that is that he will not get it and therefore serve a full sentence.

Now, in these income tax cases, I don't think that Mr. Costello should be segregated and treated any differently than anyone else. He has been convicted. On appeal I say to your Honor that we will contest the question of whether there was sufficient evidence, I mean, not only on matters of law but we will contest the basic fact on the evidentiary question, despite the jury's verdict, which your Honor is bound by for the purpose of these motions. And I would ask, your Honor, I would think that a sentence of three years was a high sentence, in view of all the income tax cases in the past, and I would ask your Honor to fix sentence according to your conscience and belief as to what is right.

The Court: Mr. MacMahon, can you refer me to any case where the cost of the prosecution has been charged against a defendant? I am not aware of any myself.

Mr. MacMahon: I am sorry, your Honor, I did not hear—

The Court: I say, can you refer me to some (2413) case where the cost of the prosecution was charged?

Mr. MacMahon: Yes, your Honor, I can. It was charged in the Irving Wechsler case, which was tried in this court

many years ago by Judge Coleman and in which Thomas E. Dewey was the prosecutor. Costs were charged. And also in the Al Capone case in Chicago.

The Court: Thank you.

Mr. Fennelly: If I may say just two other things to your Honor; one is that, as your Honor knows, Mr. Costello just recently finished serving a sentence of 18 months for contempt of the Senate and which he served his full sentence; and also that the Government has liens on all of Mr. Costello's property which is some 250, roughly, to 300 thousand dollars, but the Government has liens on it all. And as part of the penalty in this case, the penalty in the civil case, wholly apart from this, and I think there should be no fine in this case, because in the civil suit, which is now pending going from the years 1941 through 1949 the Government is entitled to recover not only the penalty of 50 per cent on the amount of tax but interest in addition, and I don't think there should be the dual punishment of fine in addition or assessment of the cost of the case. The jury did acquit Mr. Costello on the year 1946. The (2414) evidence shows he is entitled to a refund on that year.

The Court: Do you desire to be heard?

Mr. MacMahon: Yes, your Honor, on the question of the assessment of cost and the fine. The cost which can be assessed under this statute are only those taxable costs, witness fees, and the like which will not amount to any substantial amount of money or begin to reimburse the Government for the enormous cost of the investigation and prosecution of this case. Therefore, your Honor, the Government strongly urges on the Court the matter of maximum fines.

The Court: Does anybody else desire to be heard?

(No response.)

The Court: The defendant will please stand.

Sentence

(The defendant stood up.)

The Court: On Count No. 1 the defendant is sentenced to a term of five years, fined $10,000, to stand committed. Count 2 the defendant is sentenced to five years to be served concurrently with the sentence imposed—that is, I mean, to make that straight: The first count is Count 2, Count 1 having been—the defendant having been found not guilty.

On Count 2 the term of five years and a fine of (2415) $10,000 and the defendant to stand committed until that fine is paid.

On Count 3 the defendant is sentenced to five years to be served concurrently with the sentence imposed on Count 2, and a fine of $10,000, and the defendant to stand committed until that fine is paid.

Count 3, a term of five years to be served concurrently with the sentence imposed on—Count 4, rather, the sentence to be served concurrently with the sentence imposed on Counts 2 and 3, and a fine of $10,000 and the defendant to stand committed until that fine is paid.

And the cost of the prosecution is taxed, to be charged against the defendant.

(To the defendant) You may sit down.

The Court: Is there any further motion?

Mr. Fennelly: Yes, your Honor.

Would your Honor continue bail of the defendant pending—I shall file a notice of appeal and I would ask your Honor to continue the bail pending appeal.

The Court: I will hear you on that.

Mr. MacMahon: Your Honor—

The Court: Are you opposed to it?

Mr. MacMahon: The Government opposes the motion.

The Court: Yes. I don't think you need to (2416) argue it because, as I understand the rule, a defendant is to be

admitted to bail if the Court feels that there is a substantial issue to be raised on the appeal. You and I will disagree on that. But I don't think that there is any substantial question, and I will deny the motion for bail pending appeal. And, of course, you have your opportunity to go to the Circuit Court.

Mr. Fennelly: Well, would your Honor do this: The Circuit Court, the next motion day is next Monday. Will your Honor grant bail pending a hearing and determination by the Circuit Court of the application for bail pending appeal?

The Court: No. I think I must deny that. The Circuit Court is in session—at least there is a judge of the Circuit Court available at 4 o'clock this afternoon before whom you may make your motion. The difficulty I find with that, and always did, when I was on the other side of the bench, was, that if the Court does that it is—I am almost making a determination that I think there is a substantial question, and as I have said to you, I don't. The motion is denied in all respects.

Mr. Fennelly: Would your Honor fix the time of surrender as of next Monday?

The Court: Oh, no.

(2417) Mr. Fennelly: To give us an opportunity to proceed with our motions in the Court of Appeals?

The Court: No. The defendant is remanded now.

Any further motions?

Mr. Fennelly: Would your Honor allow surrender at 4.30 this afternoon?

The Court: Until 4.30 this afternoon?

Mr. Fennelly: That will be after we have had time to go to the Circuit Court.

The Court: No. I will deny your motion. The defendant is now remanded.

Judgment and Commitment

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

No. C141/9

UNITED STATES OF AMERICA

—v.—

FRANK COSTELLO

On this 17th day of May, 1954 came the attorney for the government and the defendant appeared in person and by counsel

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by a jury of the offense of wilfully and knowingly attempting to defeat and evade a large part of the income tax due and owing by him and his wife for the years 1947-1948-1949, by filing false and fraudulent joint income tax returns Sec 145 (b) Internal Revenue Code; Title 26 U. S. Code, Section 145 (b) as charged in counts 2-3-4 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

Judgment and Commitment

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five years and fined $10,000. on each of counts 2-3-4. Prison sentence on counts 2-3-4 to run concurrently with each other. Total fines of $30,000. to be paid or defendant to stand committed until fines on counts 2-3-4 are paid or he is otherwise discharged according to law. Defendant to pay the cost of prosecution as taxed.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

JOHN F. X. MCGOHEY,
United States District Judge.

A True Copy. Certified this 17th day of May, 1954.

(*Signed*)

WILLIAM V. CONNELL,
Clerk.

(*By*)

J. A. JOHNSON,
Deputy Clerk.

Exhibits

The following exhibits, designated to be included in the Record on Appeal, are reproduced and bound in a separate volume.

Government's Exhibits—23, 30, 335, 362, 362A-E, 363, 363A-F, 364, 364A.

Defendant's Exhibits—H, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, EE, FF, GG-1, GG-2, PP-3, PP-8, WW, WW-1, WW-2, WW-3, WW-4, WW-5, ZZ.

Defendant's Exhibits for Identification, DDD, EEE, FFF, GGG and HHH are also reproduced and bound in the exhibit volume.